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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,931	10/29/2003	Margaret Aleles	JBP5001NP	7043
27777	7590	10/14/2010		
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			EXAMINER PORTER, RACHEL L	
			ART UNIT	PAPER NUMBER
			3626	
			NOTIFICATION DATE	DELIVERY MODE
			10/14/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/695,931

Applicant(s)

ALELES ET AL.

Examiner

RACHEL L. PORTER

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57, 60, 62 and 63 is/are pending in the application.
- 4a) Of the above claim(s) 1-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 57, 60, 62 and 63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is in response the election mailed 1/14/10 . Claims 1-57,60, and 62-63 are pending. Claims 1-56 have been withdrawn from further consideration. Claims 57,60, and 62-63 are presented for examination.

Information Disclosure Statement

2. The IDS's filed 7/12/10 and 7/13/ 10 have been considered by the examiner.

Election/Restrictions

3. In the reply filed 1/14/10, applicant requested clarification of the status of Claims 47-51.

4. On a telephone message left March 24, 2010, it was explained that claims 47- 51 would be Group V (drawn to methods of diagnostic testing through sampling of nonliquid body material, classified 600/562). Applicant chose to maintain the election without traverse of Group IV, Claims 57- 64 in the reply filed on 1/14/10.

5. Applicant's confirmation of the election of 57,60, and 62-63 in the reply filed on 7/12/10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 57, 60, and 62-63 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based upon consideration of all of the relevant factors with respect to exemplary claim 57 as a whole, claim(s) 57 is held to claim an abstract idea, and is/are therefore rejected as ineligible subject matter under 35 U.S.C. 101. The rationale for this finding is explained as follows: the claim includes insufficient recitation of a particular machine/apparatus and no transformation of underlying subject matter into a different state or thing.

Dependent claim(s) 60, 62-63 when analyzed as a whole are held to be patent ineligible under 35 U.S.C. 101 because the additional recited limitation(s) fail(s) to establish that the claim(s) is/are not directed to an abstract idea, as they contain similar deficiencies to claim 57, and also fail to correct deficiencies of claim 57. Therefore, they are also rejected.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 60 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 60 recites a "perceived stress score." It is unclear how the "perceived stress score" correlates to the "Perceived Stress Scale," which applicant describes as a well established tool in the industry (par. 19). It is not clear if these terms are intended to be interchangeable, or if additional manipulation(s) is/are performed to transform the scaled number into a score. For the purpose of applying art, the Examiner will interpret these terms as being the same.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 57, and 62-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Douglas et al (US 6,039,688).

[claim 57] Douglas discloses a method of providing a personalized wellness program to a customer/user (col. 5, line 54-59), the method comprising:

- a) obtaining personal information from a customer; (col. 6, lines 14-26; col. 6, lines 58- col. 7, line)
- b) obtaining objective information comprising a psychometric stress measurement from the customer; (col. 6, lines 58- col. 7, line 5—vitals including blood pressure, and stress levels, eating habits depression)
- c) using the personal information and the objective information to create a personalized wellness program for the customer; and (col. 7, lines 15-43—information is used to design activities, and generate goals for the patient.
- d) providing the personalized wellness program to the customer, wherein the personalized wellness program comprises a recommendation for a product, service, or activity to improve the customer's stress measurement. (col. 7, lines 54-col. 8, line 5—recommended activities and medications (products) are made for the patient who may access the plan once they log onto the website)

[claim 62, 63] Douglas discloses method of claim 57 wherein the personalized wellness program comprises a recommendation for a product, activity, or service to decrease stress measurement. (col. 7, lines 31-37; col. 14, lines 54-57—education, col. 14, lines 7-14, col. 18, lines 43-54: relaxation, exercise: activities for improving stress levels, decreasing stress affects/decreases stress hormone levels).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Douglas in view of Measuring Stress--(Measuring Stress: A Guide for Health and Social Scientists, Oxford University Press, 1997, pages 138-139)

[claim 60] Douglas discloses the method of claim 57 wherein stress levels of a patient, are assessed (col. 6, lines 58- col. 7, line 5—vitals including blood pressure, and stress levels, eating habits depression). Douglass does not expressly disclose that the psychometric stress measurement includes a "perceived stress score." (measurement comprises a psychometric measurement. (col. 7, lines 1-4--eating habits; blood pressure; depression).

However, the Perceived Stress Scale is old and well-known in the art as a stress psychometric tool (Measuring Stress, p. 138, par. 2) Furthermore, PSS provides a reference base for studying perceived stress across gender age, race, and other demographic characteristics. (Measuring Stress, p. 138, par. 2) At the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art modify the method of Douglass with the teaching of Measuring Stress to provide Perceived Stress Scale assessment score. As suggested by Measuring Stress, one

would have been motivated to include this feature to determine the degree to which the situations in the individual's life are deemed to be stressful, (Measuring Stress, p. 138, par. 2, to predict various outcomes independent of certain psychological symptoms, (Measuring Stress, p. 139, par. 4) and to develop a better individual wellness plan.

Response to Arguments

13. Applicant's arguments filed 7/12/10 have been fully considered but they are not persuasive.

(A) Applicant traverses the rejection of claims 57,60 and 62-63 under 35 USC 101.

The rejection of the pending claims under 35 USC 101 has been maintained. The machine or transformation test remains relevant in the factors to be considered in determining whether or not a method claim is patent eligible.

(B) Applicant has amended claim 57 to recite "psychometric" stress measurements.

The Douglass reference discloses a method wherein stress levels are assessed, as well as patient depression, eating habits, and blood pressure. The language of claim 57, and the applicant's specification, fail to distinguish the stress levels measured in Douglas from the recited "psychometric" stress levels.

(C) Applicant's arguments with respect to claim 60 have been considered but are moot in view of the new ground(s) of rejection. The claim has been amended to recite a "Perceived Stress Score" and an additional reference has been applied to address this limitation.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **RACHEL L. PORTER** whose telephone number is (571)272-6775. The examiner can normally be reached on **M-F, 10-6:30**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Morgan can be reached on (571) 272-6773. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. L. P./
Examiner, Art Unit 3626

/Robert Morgan/
Supervisory Patent Examiner, Art Unit 3626